IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7042 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKKAR BHUDHARBHAI MAYARAM & 1 - Petitioner(s)

Versus

RADHANPUR NAGAR PALIKA - Respondent(s)

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Appearance :

MRS SN PAHWA FOR MR PM THAKKAR for Petitioner(s) : 1,
MR JAGDISH MEHTA FOR MR YOGESH S LAKHANI for Respondent(s) : 1,
MR AMAR D MITHANI & MR YV VAGHELA for intervenors

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/02/2006

ORAL JUDGMENT

1.In the present petition, the petitioner has challenged the notice dated 27.7.95 issued by the respondent Nagarpalika seeking to evict the petitioner from the

premise alloted to the petitioner pursuant to the resolution No.296 dated 29.8.92. It is the case of the petitioner that he is doing his small business of selling sweets and other sundry business from the shop so alloted to him. The petitioner contends that the Nagarpalika seeks eviction of the shop which is not a justified action. The petitioner obtained stay from this Court and during the pendency of this petition further proceedings have remained stayed. In the meantime, some dispute arose with respect to the allegations of the petitioner having occupied area larger than what was granted to him. Since the Municipality sought to remove such alleged encroachment, the petitioner approached the civil court by filing Civil Suit No.7/04 before the Civil Judge (JD), Radhanpur and obtained interim injunction.

2. It is the case of the petitioner that the respondent Nagarpalika has regularised the occupation of similarly situated shop holders. Learned advocate Mrs.Pahwa has pointed out an order dated 16.12.2005 passed by this Court in Special Civil Application No.7819 of 2000. She pointed out that the petitioner therein, namely, Shankarbhai Bhikhalal Thakkar had earlier approached the Secretary, State Government against the order

passed by the Collector. It was the case of the petitioner therein that under similar circumstances when another shop holder had approached the State Government against the order passed by the Collector, the Secretary remanded the proceedings to the Collector and upon remand, the Collector was pleased to regularize the occupation of shop holder whereas in case of the petitioner in Special Civil Application No.7819 of 2000, the Secretary was pleased to reject the revision application. On the basis of these factual averments, this Court was pleased to remand the proceedings to the Collector for fresh consideration bearing in mind the case of other shop holder. Learned advocate Mr.Pahwa submitted that the present case is similar to that of the petitioner in Special Civil Application No.7819 of 2000 except only the fact that the petitioner herein has approached this Court directly and at a stage when the Municipality had issued notice for eviction. She therefore, submitted that barring these cosmetic differences, the present petitioner also is similarly situated and should therefore receive similar treatment.

3. Appearing on behalf of the respondent Nagarpalika, Shri Jagdish Mehta for Shri YS Lakhani and Shri Mithani

appearing for the intervenor submitted that the petitioner has made encroachment in addition to the area already allotted to him and that such encroachment cannot be regularized. It was further submitted that whether the petitioner is situated similarly to other shop holders is a matter which is to be examined and ascertained by the authorities. It was contended that any portion of the shop which falls within the road-line if at all cannot be regularised. Shri Y.V. Veghela appearing for yet another intervenor supported the stand of the respondent Municipality.

4. After hearing the learned advocates for the parties, I find it appropriate that the question of regularization of the occupation of the petitioner be considered by the respondent. To the extent if there is any additional encroachment, obviously the same cannot be regularized. This however, is a matter of fact to be ascertained after proper measurements. Learned advocate Mrs.Pahwa for the petitioner also agreed that if the petitioner has carried out any encroachment in addition to the occupation of the shop allotted by the Municipality, the same cannot be a subject matter of regularization. However, she submitted that the petitioner deserves the same treatment as is being

given to similarly situated shop holders. It will therefore be appropriate that the respondent Nagarpalika will consider the representation of the petitioner if made within a period of two weeks from today. It will be open for the petitioner to point out that the petitioner is similarly situated to the petitioner in Special Civil Application No.7819 of 2000 or to the other shop holder whose case was considered and accepted by the Collector or any other shop holders. It is expected that if the petitioner is situated similarly to the above-mentioned persons, he would receive the same treatment as is given to such shop holders. After measurements and putting the petitioner to notice, it will be open for the Nagarpalika to ensure that encroachment if any made by the petitioner be removed. It is expected that the petitioner will also cooperate in such exercise. Learned advocate for the petitioner had indicated that the petitioner would be withdrawing the pending civil suit. The representation of the petitioner would be considered expeditiously and it will be open for the respondents to consider the case of the petitioner for regularization either on lease basis or on permanent sale if the petitioner agrees to the terms and

conditions of sale and agrees to pay a reasonable price that may be fixed by the Nagarpalika. While considering the representation of the petitioner, the Municipality will also take into account the objection if any raised by the intervenors.

5. With the above directions, the petition is disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)